taking itself and the preparing for human consumption; also the treaty provided that foreign fishing vessels might enter into the territorial waters for wood, water, shelter or repairs, and for no other purpose; so, on this ground, even the entry itself may have been sufficient to decide the question; further, the court seemed to have been influenced by the fact that this kind of fishing was considered contrary to public policy, as tending to annihilate the fish-food supply, and hesitated to give immunity to the vessel under these circumstances. On the above-mentioned grounds it seems that this case may be distinguished from the case at hand. Probably the Oregon court based its decision on the stipulation of the parties that the act of removing the seine from the water was a necessary part of the fishing operation,—otherwise it is difficult to see on what grounds the case should be sustained; and it may be noted that this court, also, was influenced by the fact that this kind of fishing is looked upon with disfavor. These courts lay some stress upon the fact that, until the fish are actually in the boat, there is still a chance of escape and that therefore the operation of fishing is not complete; granting this, certainly in these two cases no more fish could enter the net, and that would seem to be the true prohibition of such a statute against fishing. The fish are undoubtedly reduced to possession and ownership when completely enclosed in the net—*State* v. *Shaw*, 67 Ohio St. 157, 60 L. R. A. 481,—and it would seem that, for ordinary purposes, the act of fishing should then be considered as complete, and certainly so as against a statute such as the one here, the purpose of which would seem merely to be to prevent the catching of fish out of the waters in question.

INJUNCTION—CRIMINAL PROCEEDINGS—Where a United States attorney was sought to be restrained by injunction from instituting criminal proceedings under the War-Time Prohibition Act, upon the ground that he had transcended his authority through misconstruction of it. *Held,* That he cannot be so enjoined. *Hoffman Brewing Co.* v. *M'Elligott* (C. C. A. 2d Circ., 1919), 259 Fed. 525.

In America the rule that a criminal prosecution will be enjoined where it is based on an unconstitutional statute and property rights are threatened with irreparable injury, is firmly established. *Debbins* v. *Los Angeles,* 49 L. Ed. 169. Ward, J., in the principal case recognizes and endorses this rule, but will not allow an extension of judicial power as sought by the petitioner here, saying that such an extension would result in an injury to our system of jurisprudence far more serious than could be counterbalanced by the equity effected. In support of his position he quotes *Arbuckle* v. *Blackburn,* 113 Fed. 616, 65 L.R.A. 864, "that for equity to entertain a bill in this aspect would be to subvert the administration of the criminal law, and deny the right of trial by jury, by substituting a court of equity to inquire into the commission of offenses where it would have no power to punish the parties if found guilty, an enlargement of jurisdiction opposed to reason and authority." Upon this reasoning, Hough, J., in the principal case, disagrees with Ward, J., saying that the matter is one of degree, not of kind or power, and questions the distinction between unlawful acts of a prosecutor done under color of

an unconstitutional statute and his unlawful acts committed under unlawful usurpation of authority, pointing out the fact that a prosecutor's act may be so preposterously unlawful (though not unconstitutional) as to justify intervention by equity. In further answer to this reasoning we may observe that no more in a case of this kind is there sanctioned an inquiry by a court of equity into disputed questions of fact than in cases for injunction against proceedings under unconstitutional statutes, so that the field of criminal litigation in which the jury is the sacrosanct tribunal is avoided. And again, Hough, J's position is allied with the spirit of modern legislation providing for declaratory judgments. Mich. P. A., 1919, Sec. 150. See applying declaratory judgment to a criminal question, *Dyson* v. *Attorney General,* (1912) 1 Ch. 158.

INJUNCTION—MASTER AND SERVANT—INJUNCTION TO ENFORCE RESTRICTIVE COVENANT DENIED.—Defendant was an ordinary employee of complainant, engaged in operating a film-coating machine, and possessed of no peculiar skill except such as he acquired because of his specialized employment in complainant's service. He terminated his employment with complainant and started to work for competitor in violation of his restrictive covenant that he would not work for competitor in the United States for two years after leaving complainant's employ, except in Alaska. Complainant seeks injunction restraining him from so working, and from revealing trade secrets. *Held,* no grounds for injunction restraining defendant from working for competitor; but restrained defendant from revealing trade secrets of complainant. *Eastman Kodak Co.* v. *Warren,* (1919) 178 N. Y. S. 14.

This court assimilates this covenant to those of indirect enforcement of personal service contracts, and therefore denies the injunction because the employee has no special skill. *Oppenheimer* v. *Hirsch,* 5 App. Div. 232; *Osius* v. *Hinchman,* 150 Mich. 603; *Sims* v. *Burnette,* 55 Fla. 702, 16 L. R. A. (N. S.) 389 and note, 15 Ann Cas. 690 and note. According to what seems to be the better view, on the other hand, such covenants are treated like similar covenants in restraint of trade connected with the sale of business, and injunctive relief is given to the employer without reference to the skill of the employee. *Marvel* v. *Jonah,* 83 N. J. Eq. 295, Ann. Cas. 1916 C 185 and note; *Freudenthal* v. *Espey,* 45 Colo. 488, 26 L. R. A. (N.S.) 961 and note; also 15 Ann. Cas. 694, and *Eureka Laundry Co.* v. *Long,* 146 Wis. 205. These courts proceed upon the theory that the covenantee's remedy at law is inadequate,—the damages accruing from day to day, and it being impossible to ascertain the money loss sustained with any degree of accuracy. Such covenants must be construed with reference to the object sought to be secured by them,—and obviously here it was to prevent the employee from using the skill, gained in complainant's service, for the benefit of his competitor, and to help complainant maintain its monopoly in the trade. In these cases of valid contracts in restraint of trade we are not confronted with the difficulty found in cases of indirect enforcement of personal service contracts, such as *Lumley* v. *Wagner,* 1 De. G. M. & G. 604, where only partial performance can be decreed, and the damages at law being at best a mere conjecture, an injunction will generally be given. But, in giving such an injunction, equity will often stop to weigh the incon-